

**SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF NEW YORK**

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ALAN COHEN, :
: **Plaintiff,** :
: :
v. :
: :
SPEYER LEGACY SCHOOL, BARBARA :
TISCHLER, SCOTT MOLIN, JOHN DOE 1-3, :
and JANE DOE 1-3, :
: **Defendants.** :
: :
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SUMMONS

Plaintiff designates
NEW YORK COUNTY
as the place of trial

The basis of the venue is:
Defendants' place of business and
residence

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorney within twenty (20) days after service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: September 19, 2016
New York, New York

WIGDOR LLP

By: 

Jeanne M. Christensen
Bryan L. Arbeit

85 Fifth Avenue
New York, New York 10003
Telephone: (212) 257-6800
Facsimile: (212) 257-6845
jchristensen@wigdorlaw.com
barbeit@wigdorlaw.com

Attorneys for Plaintiff

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Index No.

COMPLAINT

Jury Trial Demanded

Plaintiff Alan Cohen (“Mr. Cohen” or “Plaintiff”), by and through his attorneys, brings this action against Defendants Speyer Legacy School (“Speyer,” or the “School”), Barbara Tischler (“Dr. Tischler”), Scott Molin (“Mr. Molin”), John Doe 1-3 and Jane Doe 1-3 (collectively, “Defendants”), and alleges:

PRELIMINARY STATEMENT

1. Speyer is an elite K-8 private school that caters to intellectually gifted students. With annual tuition in excess of \$40,000, the School advertises an impressive curriculum and a top-flight staff. Speyer describes its 50 faculty members as “talented and fearless.”
2. In 2015, Speyer hired Mr. Cohen to help lead such prominent faculty and exceptionally gifted students. Based on his depth of experience of more than 20 years with the New York City Department of Education (“DOE”) and years as an administrator in the private school setting, Speyer offered him the position as Assistant Head of the School and Head of the Lower School, grades K-4.
3. Unfortunately, his wealth of administrative knowledge and insight became substantially less important once conversations began about Mr. Cohen’s sexual orientation.

4. Despite laws enacted to protect individuals from insidious bias, Mr. Cohen, a 63-year-old gay male, suddenly found that his relationship status was an issue.

5. Although Mr. Cohen received exclusively positive praise from faculty and parents for his work, in April 2016 the new Head of the School, Defendant Tischler, told Mr. Cohen that his contract was not being renewed because he was “not a good fit.”

6. Being told he was “not a good fit” was an obvious pretext for a decision that was based on an unlawful factor, namely, Mr. Cohen’s sexual orientation.

7. Immediately thereafter, Speyer replaced him with a female first grade teacher who has far less experience, qualifications and is heterosexual and married.

8. Preventing Mr. Cohen from discussing his departure with the school community, Defendant Tischler unilaterally messaged to parents that he was leaving for personal family reasons.

9. Nothing is further from the truth, however, and as detailed below, Speyer’s conduct has now forced Mr. Cohen to seek redress through the legal system.

10. Speyer may be an exclusive private school for gifted and talented children, but it is unlawful to make employment decisions based on protected characteristics, including sexual orientation.

11. School officials and teachers have a responsibility to lead students toward their maximum learning potential. Such leadership includes showing students how to follow the laws designed to regulate work environments, including schools. Here, by their own conduct, Defendants violated the laws enacted to eliminate unlawful discrimination. By allowing stereotypical ideas about homosexuality to enter into the learning environment and cloud compliance with the law, Speyer has failed to lead.

12. Accordingly, Mr. Cohen brings this action to redress Defendants unlawful discrimination and retaliation and compensate him for the substantial financial and emotional damages he has endured, and will endure, because of his unlawful termination.

NATURE OF THE CLAIMS

13. The unlawful discrimination and retaliation described herein was committed in violation of the New York City Human Rights Law, N.Y. City Administrative Code §§ 8-101 *et seq.* (“NYCHRL”) and the New York State Human Rights Law, N.Y. Executive Law §§ 290 *et seq.* (“NYSHRL”). Mr. Cohen also has a common law breach of contract claim.

JURISDICTION AND VENUE

14. The Court has personal jurisdiction over the Defendants pursuant to CPLR § 301 because Speyer is registered and accredited through the New York Association of Independent Schools (“NYSAIS”) and has its principal place of business in New York County.

15. Venue is proper pursuant to CPLR § 503 because Mr. Cohen resides in New York County and Speyer operates its principal place of business in New York County.

PARTIES

16. Plaintiff Alan Cohen is a 63-year old gay male with a distinguished career as a school administrator. Mr. Cohen is a citizen of the State of New York and resides in New York County. At all relevant times, Mr. Cohen is an “employee” and/or “eligible employee” defined as in the applicable statutes.

17. Defendant Speyer Legacy School is a private, independent school located at 925 Ninth Avenue, New York, New York, 10019. Speyer advertises itself as a school for intellectually gifted students. At all relevant times, Speyer is an “employer” as defined in the applicable statutes.

18. Defendant Barbara Tischler, Head of School at Speyer Legacy School, resides, upon information and belief, in the State of New York. At all relevant times herein, Dr. Tischler directed and participated in the unlawful and discriminatory conduct described herein towards Plaintiff.

19. Defendant Scott Molin, Director of Finance and Operations at Speyer Legacy School, resides, upon information and belief, in the State of New York. At all relevant times herein, Mr. Molin directed and participated in the unlawful and discriminatory conduct described herein towards Plaintiff.

20. Defendants John Doe 1-3 and Jane Doe 1-3 are unidentified members of Speyer's Board of Trustees ("Board") that participated and/or aided and abetted the decision to unlawfully terminate Mr. Cohen.

FACTUAL ALLEGATIONS

Background

21. Mr. Cohen has an extensive and distinguished career as a school administrator.

22. He worked at the DOE for more than 20 years, including serving as the principal of the New Vision School for 7 years.

23. In the 4 years immediately preceding his employment at Speyer, Mr. Cohen worked as the head of the lower school at the Portledge School.

24. Throughout his career, Mr. Cohen received numerous accolades, including *inter alia*, being named the "Time Warner Principals of Excellence Award" and the "Outstanding Educator of the Year Award" from Education Update.

25. Since 2008, Mr. Cohen has worked as a Group Leader at the Harvard Principals' Center and served as the program's Co-Chair from 2010 until the present.

Speyer Hires Mr. Cohen

26. In or around March 2015, Richard Barter, Speyer's interim Head, hired Mr. Cohen to work as the Assistant Head of School in charge of the Lower School, grades K-4. As part of his employment, Speyer and Mr. Cohen entered into an employment agreement (the "Agreement") that set

forth terms of his employment for the 2015-2016 year. Incorporated into this complaint, a copy of the Agreement is attached hereto as Exhibit 1.

27. The Agreement provided that Mr. Cohen would receive a contract for the 2016-2017 year (“New Contract”) on or before March 18, 2016. It further detailed that he would receive the New Contract *unless* Speyer provided written notice on or before March 1, 2016 of its intention not to employ Mr. Cohen.

28. The Agreement also provided an annual allowance of \$11,000 for business expenses.

Mr. Cohen’s Sexual Orientation

29. Subsequent to Mr. Cohen’s hiring, Defendant Tischler was appointed to act as the Head of School.

30. Sometime in the fall of 2015, Defendant Tischler met with Mr. Cohen to tell him that she received a report from the school psychologist that a staff member was asking about Mr. Cohen’s sexual orientation.

31. Defendant Tischler failed to explain why she thought it was necessary to discuss the report, nor did she indicate that she would do anything about the staff member’s questioning of Mr. Cohen’s sexual orientation. To be clear, Defendant Tischler failed to acknowledge that sexual orientation discrimination, including gender stereotyping, is an impermissible form of sex discrimination.

32. Although upset by the fact that his sexual orientation was a topic of conversation, Mr. Cohen acknowledged to Defendant Tischler that he was gay.

Mr. Cohen’s Sexual Orientation Spreads Through the Speyer Community

33. After this conversation with Defendant Tischler, it became apparent to Mr. Cohen that his sexuality was being discussed among the Speyer community.

34. Mr. Cohen was aware that faculty members openly discussed his sexual orientation. In fact, he knew that his homosexuality was discussed among members of the Board of Trustees at Speyer. Specifically, a wife of a Board member offered to set Mr. Cohen up on a date with one of her male friends.

35. Upset by this offer, Mr. Cohen told Defendant Tischler what the Board member's wife said to him. Defendant Tischler did not do or say anything in response.

36. It was clear to Mr. Cohen that other senior administrators and staff also were discussing his homosexuality. For example, as part of an internal review concerning a staff member's complaint that Mr. Cohen allegedly made a racist remark, Defendant Molin, the Director of Finance and Operations made reference specifically to Mr. Cohen's sexual orientation. After deciding that the employee's allegation was baseless, Defendant Molin offered his unsolicited opinion that even if Mr. Cohen said something racist, that he was "protected ... because of [his] sexual orientation."

37. At this meeting, Mr. Cohen did not ask Defendant Molin to elaborate on this statement.

Speyer Informs Mr. Cohen of His Employment Separation

38. Sometime in March 2016, while in the office, Mr. Cohen saw a document that listed Speyer faculty and staff names with information about renewal contracts.

39. Mr. Cohen's name was on this list and the document set forth that he would be receiving a contract renewal at a 3% pay raise.

40. On or around April 4, 2016, Defendant Tischler met with Mr. Cohen and told him that Speyer would not be renewing his Agreement. Specifically, she told him the reason was that he was "not a good fit." Mr. Cohen was shocked and surprised. Up until that time, he had received only positive feedback and praise for his work. Further, he had previously seen his name on the list stating he would receive a contract renewal and 3% salary increase.

41. Contrary to the terms of the Agreement, at no time prior to this meeting did Speyer provide written notice to Mr. Cohen indicating that it was not renewing his contract.

42. Upon information and belief, unknown members of Speyer's Board of Trustees encouraged or were actively part of the decision to not renew Mr. Cohen's contract.

43. Mr. Cohen found Defendant Tischler's basis for his termination, "not a good fit" highly suspect and pretextual. Earlier in the school year, Mr. Cohen had worked with Defendant Tischler to hire a new Director of Admissions. During this process, Defendant Tischler told Mr. Cohen that she was recommending to the Board to promote the current Assistant Director of Admissions ("Assistant Director") to the position. However, it was common knowledge that the Assistant Director is a lesbian and as a result, Defendant Tischler was "having trouble convincing the Board" to hire her because she "did not fit the bill."

44. In this regard, Defendant Tischler suggested that he "talk" to the Assistant Director about how she could perhaps look more feminine by altering her hair and clothing selections. Defendant Tischler's suggestion was offensive to Mr. Cohen and he did not follow through on the suggested conversation.

45. As such, Mr. Cohen knew that sex and gender stereotyping had occurred at Speyer with regard to the Assistant Director. Therefore, his status as gay exposed him to the same type of sex and gender bias, including discrimination premised on sex-based preferences, associations, assumptions, expectations, stereotypes or norms.

Speyer Distributes a False Reason for Mr. Cohen's Separation

46. On April 5, 2016, Speyer distributed a letter regarding Mr. Cohen's departure to the entire School community, approximately 300 families. This letter falsely claimed that Mr. Cohen was leaving his position as Head of the Lower School due to "family health issues."

47. The letter acknowledged that Mr. Cohen “brought years of experience and a great love for children and teachers to his work here at Speyer” and claimed that Speyer “will miss him.”

48. Thereafter, on Sunday, April 10, 2016, Defendant Tischler called Mr. Cohen and told him that he “was not going to be happy,” but Speyer had selected Lemor Balter, a current First Grade Teacher, as his replacement for the Head of the Lower School.

49. Upon information and belief, Ms. Balter has no experience as a school administrator.

50. Additionally, upon information and belief, Ms. Balter is heterosexual and married.

51. Before getting off the call, Defendant Tischler told Mr. Cohen that she intended to announce Ms. Balter as his replacement to the Speyer faculty without him present. In this regard, she told him not to attend the Monday morning meeting scheduled for April 11, 2016.

52. For the remainder of the year, Speyer took steps to ostracize Mr. Cohen from his regular responsibilities and minimize his interaction with faculty, staff and students. For instance, although Mr. Cohen was the acting head of the Interview Committee, he was no longer asked to conduct candidate interviews.

53. Instead, Ms. Balter immediately began attending meetings in his place and working with faculty to plan for the following year. Similarly, Ms. Balter began handling current issues normally assigned to Mr. Cohen as Head of the Lower School.

54. After the announcement of Ms. Balter as his replacement, Mr. Cohen asked Defendant Molin about receiving his \$11,000 annual expense allowance as stated in the Agreement. Defendant Molin to submit his rent expenses to him but threatened that Mr. Cohen must “behave” if he wanted to receive the \$11,000 reimbursement.

55. Subsequently, Mr. Cohen retained legal counsel who sent a letter to Defendants on May 27, 2016, outlining his claims of sexual orientation discrimination.

56. Speyer then refused to pay the \$11,000 in reimbursed expenses as contracted for in the Agreement.

57. Further, Speyer publically continued to message a false basis for Mr. Cohen's departure.

58. Mr. Cohen was told to no longer report to work after June 10, 2016.

FIRST CAUSE OF ACTION
DISCRIMINATION IN VIOLATION OF NYCHRL

59. Plaintiff repeats, reiterates and re-alleges each and every allegation in all of the preceding paragraphs as if fully set forth herein.

60. By the actions described above, among others, Defendants discriminated against Mr. Cohen on the basis of his sexual orientation, actual or perceived, in violation of the NYCHRL by treating him differently from and less favorably than similarly situated employees who were not homosexual, or perceived as homosexual like Mr. Cohen, including terminating his employment because of his sexual orientation.

61. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of the NYCHRL, Mr. Cohen has suffered and continues to suffer harm for which he is entitled to an award of damages, to the greatest extent permitted under law, in addition to reasonable attorneys' fees and expenses.

62. Defendants' unlawful and discriminatory actions constitute malicious, willful and wanton violations of the NYCHRL for which Plaintiff is entitled to an award of punitive damages.

63. To the extent that any of the individual Defendants are not individually liable as Mr. Cohen's employer, the individual Defendants aided and abetted the unlawful conduct.

SECOND CAUSE OF ACTION
DISCRIMINATION IN VIOLATION OF THE NYSHRL

64. Plaintiff repeats, reiterates and re-alleges each and every allegation in all of the preceding paragraphs as if fully set forth herein.

65. By the actions described above, among others, Defendants discriminated against Mr. Cohen on the basis of his sexual orientation, actual or perceived, in violation of the NYSHRL by treating him differently from and less favorably than similarly situated employees who were not homosexual or perceived homosexual like Mr. Cohen, including terminating his employment because of his sexual orientation.

66. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of the NYSHRL, Mr. Cohen has suffered and continues to suffer harm for which he is entitled to an award of damages, to the greatest extent permitted under law.

67. To the extent that any of the individual Defendants are not individually liable as Mr. Cohen's employer, the individual Defendants aided and abetted the unlawful conduct.

THIRD CAUSE OF ACTION
RETALIATION IN VIOLATION OF THE NYCHRL

68. Plaintiff repeats, reiterates and re-alleges each and every allegation in all of the preceding paragraphs as if fully set forth herein.

69. By the actions described above, Defendants retaliated against Mr. Cohen after he made a protected complaint of discrimination by failing to pay him the annual allowance provided under his contract.

70. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of the NYCHRL, Plaintiff has suffered and continues to suffer harm for which he is entitled to

an award of damages, to the greatest extent permitted under law, in addition to reasonable attorneys' fees and expenses.

71. Defendants' unlawful and discriminatory actions constitute malicious, willful and wanton violations of the NYCHRL for which Plaintiff is entitled to an award of punitive damages.

72. To the extent that any of the individual defendants are not individually liable as Mr. Cohen's employer, the individual defendants aided and abetted the unlawful conduct.

FOURTH CAUSE OF ACTION
RETALIATION IN VIOLATION OF THE NYSHRL

73. Plaintiff repeats, reiterates and re-alleges each and every allegation in all of the preceding paragraphs as if fully set forth herein.

74. By the actions described above, Defendants retaliated against Plaintiff after he made a protected complaint of discrimination by failing to pay him the annual allowance provided under his contract.

75. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered and continues to suffer harm for which he is entitled to an award of damages, to the greatest extent permitted under law, in addition to reasonable attorneys' fees and expenses.

76. To the extent that any of the individual defendants are not individually liable as Mr. Cohen's employer, the individual defendants aided and abetted the unlawful conduct.

FIFTH CAUSE OF ACTION
BREACH OF CONTRACT
Against Defendant Speyer

77. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

78. Speyer and Mr. Cohen entered into a binding contract ("Agreement").

79. The Agreement provides that Speyer was required to offer Mr. Cohen a renewed contract for the school year 2016-2017, *unless* on or before March 18, 2016, it sent written notice of its intention not to employ Mr. Cohen.

80. As detailed above, Speyer failed to send Mr. Cohen written notice of its intent not to renew on or before March 1, 2016 and breached the Agreement.

81. As detailed above, Speyer failed to offer any basis for a good cause termination of Mr. Cohen.

82. After Mr. Cohen was told in April 2015 that he would not receive a renewal contract, Speyer refused to reimburse his \$11,000 in expenses as expressly provided for in the Agreement.

83. As a direct and proximate result of Speyer's breach of contract, Mr. Cohen has suffered harm for which he is entitled to an award of damages to the greatest extent permitted under law, including but not limited to prejudgment interest pursuant to the New York Civil Practice Law and Rules.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment in his favor and against Defendants for the following relief:

A. A declaratory judgment that the actions, conduct and practices of Defendants complained of herein violate the laws of the City of New York and the State of New York;

B. An award of damages against Defendants, in an amount to be determined at trial, plus interest, to compensate for all monetary and/or economic damages;

C. An award of damages against Defendants, in an amount to be determined at trial, plus interest, to compensate for all non-monetary and/or compensatory damages, including, but not limited to, compensation for Plaintiff's emotional distress;

- D. An award of punitive damages in an amount to be determined at trial;
- E. Pre-judgment interest on all amounts due;
- F. An award of Plaintiff's reasonable attorneys' fees and costs; and
- G. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable as of right by jury.

Dated: September 19, 2016
New York, New York

Respectfully submitted,

WIGDOR LLP

By: 

Jeanne M. Christensen
Bryan L. Arbeit

85 Fifth Avenue
New York, NY 10003
Telephone: (212) 257-6800
Facsimile: (212) 257-6845
jchristensen@wigdorlaw.com
barbeit@wigdorlaw.com

Attorneys for Plaintiff